

HON. THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RYAN DIAZ,

Plaintiff,

v.

NINTENDO OF AMERICA, INC.,

Defendant.

NO. 2:19-cv-01116-TSZ

**DECLARATION OF KIM D.  
STEPHENS IN SUPPORT OF  
PLAINTIFF'S MOTION TO  
APPOINT INTERIM CO-LEAD  
COUNSEL**

I, Kim D. Stephens, declare as follows:

1. I am a partner in the law firm of Tousley Brain Stephens (“TBS”) and counsel for Plaintiff Ryan Diaz (“Plaintiff”) in the above-captioned action. I submit this declaration in support of Plaintiff’s Motion to Appoint Interim Co-Lead Counsel. I have personal knowledge of the information contained herein, and if called as a witness I could and would testify competently thereto.

2. On July 19, 2019, Plaintiff filed a Complaint against Defendant Nintendo of America, Inc. (“Nintendo”), on behalf of himself and a proposed class of consumers who purchased the Nintendo Switch gaming system (“Switch”) and Joy-Con gaming controllers. ECF No. 1. The Complaint alleges that the Joy-Cons suffer from a common defect that causes

1 a phenomenon known as “drift” which causes characters or action on the game screen to move  
 2 in a direction without command by the gamer or engagement of the Joy-Con (the “Drift  
 3 Defect”). The Complaint alleges that the Drift Defect renders the Switch difficult to operate,  
 4 non-responsive, and otherwise unsuitable for gameplay. *Id.*

5 3. I am admitted to practice in Washington and Oregon and a number of federal  
 6 courts across the country, including the Western District of Washington. I am in good standing  
 7 in every court in which I have been admitted to practice.

8 4. Below are a number of class actions in which I have played a significant role in  
 9 prosecuting over the course of my legal career. A more detailed biography is attached hereto as  
 10 Exhibit A.

- 11 • *In re Premera Blue Cross Custody Data Security Breach Litigation*, No. 15-md-  
 12 2633 (D. Or.): Lead counsel in a multidistrict litigation over Premera Blue  
 13 Cross’s 2015 data breach; the Court recently granted preliminary approval of a  
 \$32 million settlement to resolve;
- 14 • *Armon v. Washington State Univ.*, No. 17-2-23244-1 SEA (Wash. Super. Ct.):  
 15 Co-lead counsel in data breach case involving stolen hard drive containing  
 personal information of over one million individuals; preliminary approval  
 granted of \$5.26 million settlement plus injunctive relief;
- 16 • *Cole v. Wells Fargo Bank, N.A.*, No. C07-0916 (W.D. Wash.): Appointed lead  
 17 counsel for national class of consumers overcharged banking fees by Wells  
 18 Fargo. The case resolved when the bank agreed to reimburse its customers all  
 overcharges and pay fees and costs;
- 19 • *Grays Harbor Adventist Christian School et al. v. Carrier Corp.*, No. 05-05437  
 20 (W.D. Wash.): As co-lead counsel, represented a national class who alleged  
 Carrier Corporation sold defective high efficiency furnaces. The case settled  
 21 when Carrier agreed to provide an enhanced 20-year warranty for consumers  
 whose furnaces had not failed, and reimburse consumers who had already  
 22 repaired their furnaces. Three million consumers were covered under the  
 settlement, which was valued at over \$300 million;
- 23 • *Clemans v. New Werner Co.*, No. 12-cv-05186 (W.D. Wash.): co-lead counsel  
 for a national class of consumers who purchased Werner “Easy Access Attic  
 Ladders” with allegedly defective hinges; the case settled for relief valued in

1 excess of \$48 million, entitling each class member to a free replacement ladder.

2 5. My law firm, TBS, has extensive experience in class action litigation. We have  
3 prosecuted numerous multimillion dollar class actions on behalf of both individuals and  
4 businesses. Attached hereto as Exhibit B is a copy of TBS's firm resume.

5 6. TBS maintains its office in Seattle, Washington. TBS has the resources  
6 necessary to effectively prosecute this case on behalf of Plaintiff and putative Class members.  
7 If I am appointed to a leadership position, my firm could and would devote the necessary  
8 resources to do so.

9 7. I am confident in that my firm and our co-counsel—also proposed interim co-  
10 lead counsel—can work together cooperatively and efficiently as co-lead counsel on behalf of  
11 Plaintiff and the putative Class.

12 I declare under penalty of perjury of the laws of the United States that the foregoing is  
13 true and correct.

14 Executed this 20th day of August, 2019. at Seattle, Washington.

15  
16 s/Kim D. Stephens  
17 KIM D. STEPHENS  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED at Seattle, Washington, this 20th day of August, 2019.

s/ Kim D. Stephens  
Kim D. Stephens

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